

### Comparative Analysis of the Polygamy Regulations in Indonesia and Morocco

Ali Trigiyatno <sup>a</sup>, Dewi Rahmawati <sup>b</sup>, Purwoko Utomo <sup>c</sup>, Mujadid <sup>d</sup>

<sup>a B C D</sup> UIN KH Abdurrahman Wahid Pekalongan , Jl. 52, Kajen, Pekalongan , Central Java.,\_Indonesia

<sup>1</sup> ali.trigiyatno@uingusdur.ac.id \*; <sup>2</sup> dewirahmawati@mhs.uingusdur.ac.id ; <sup>3</sup> pwk.utomo@gmail.com ; <sup>4</sup> mujadid@gmail.com

\*corresponding author

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#### ABSTRACT

The purpose of this essay is to compare and comprehend the similarities and differences in the rules governing polygamy in the countries of Indonesia and Morocco. applying a normative strategy while also utilizing comparative research. Using secondary data sources and involving primary, secondary, and tertiary sources of legal information in the research process. Technique of analysis combined with content analysis. In light of this, the law in Morocco goes one step further in providing the wife the ability to create conditions or a marriage agreement, the objective of which is that she is not willing to be co-opted. Despite the fact that both parties subscribe to polygamy, the law in Morocco goes one step further. The court will not grant the spouse permission to remarry even if he expresses a desire to do so. In Indonesia, one does not find an explicit version of the same regulation. Aside from that, the legislation in Morocco seems to further scare men into not practicing polygamy by beginning the sound of various articles with the phrase "polygamy is prohibited if," and so on. This is done to discourage spouses from engaging in the practice. In spite of the fact that the law in Indonesia has a propensity to utilize forceful language, such as mandatory and must, etc. Learning about laws in other countries will broaden legal horizons in the future, especially when revising a law that requires amendments at some time. The article contributes to legal scholarship by providing a detailed comparative analysis of polygamy regulations in Indonesia and Morocco, uncovering legal differences, and emphasizing the broader implications for legal understanding and future revisions



Author correspondence email: [ringusta@fh.unmul.ac.id](mailto:ringusta@fh.unmul.ac.id)



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## 1. Introduction

The legalization of polygamy can take quite a few different forms in nations where Muslims make up the majority of the population. There are several nations, such as Turkey, Tunisia, and Azerbaijan, that have totally outlawed the practice of polygamy in their positive laws. Some nations, including as Saudi Arabia, have not yet moved away from fiqh standards that are quite lax in matters pertaining to polygamy. These nations include those who practice polygamy. On the other hand, the vast majority of Muslim nations have implemented laws and policies that make it more difficult to engage in polygamy than it was in the past. Polygamy is now more difficult to engage in than it was in the past (Muhammad Roy Purwanto; 2021).

Indonesia and Morocco are just two of the countries that are cracking down on polygamy in their legal systems. This tightening is basically a method of reaching a compromise between parties that want the complete abolition of polygamy, which is often advocated for by gender activists, and groups that want to keep polygamy, which is generally supported by conservative scholars. The former group is the more vocal of the two (Mounira M. Charrad; 2012).

Comparing the policies of these two countries regarding the practice of polygamy is not only fascinating but also difficult to do. In the realm of Islamic jurisprudence, Morocco is associated with the Maliki school, whereas Indonesia is associated with the Shafi'i school of thought. Morocco was a colony of France in the past, while Indonesia was a Dutch colony for a significant amount of time. The country of Morocco is situated at the most westernmost point of the African continent, in close proximity to the European civilizations of France and Spain on the European continent. The legal system in Southeast Asia, including Indonesia, is largely influenced by Dutch legal tradition due to Indonesia's location there.

Despite the fact that polygamy is severely enforced in both of these countries, there are, of course, distinctions and particular emphases that require to be investigated based on the provisions of positive law in each of these nations. The nation of Morocco was selected for this study due to the fact that it is a nation that has only recently begun the process of altering its family law, yet it has already garnered a lot of praise due to the perception that it is contemporary, progressive, and supportive of women. Several researchers, such as Jan Michiel Otto, Lynn Welchman, Ziba Mir-Hosseini, and Yolanda Aixela Cabre, have stated that the Moroccan Family Law is one of the most progressive and most significant developments in Family Law, as well as the most egalitarian and the most different from other family laws that are currently in effect. This is in reference to the recent trend of family law reform in Muslim countries. (Budi Juliandi et al; 2017)

Ismail Marzuki produced an article titled The Politics of Polygamy Law: A Study of Legislation in Muslim Countries, which is related to his previous writings on the practice of polygamy in countries with a Muslim majority. This article explores the political and legal climate around polygamy in numerous different Muslim nations. In the meantime, this article analyzes two countries in particular, namely Indonesia and Morocco, making it more targeted and providing more in-depth analysis. (Ismail Marzuki, 2019)

In addition to this, Ahmad Furqon Darajat wrote another piece on the same subject with the title The Status of Polygamy in Conventional and Contemporary Legislation and Its Relevance to Surah An-Nisa' Verse 3. This article suffers from a lack of depth and emphasis due to the fact that it only makes passing reference to a few of the laws that prohibit polygamy in a number of nations. In contrast to what the author asserts in this piece, I will. (Furqan Darajat, 2020)

## 2. Method

The method employed in this study is called yuridis normative comparisons, and they were made using the studies library. Because the purpose of this research is to analyze the similarities and differences in the legal systems of the two countries, comparative studies are utilized. The data that were used were secondary data, and they were compiled using primary, secondary, and tertiary sources of legal information from the countries of Indonesia and Morocco. This research also maximizes the use of n publications related laws, with object research consisting of books, texts, and legal journals. Pen research – This also maximizes the use of n publications related laws. In addition to that, it will make use of non-legal resources throughout the investigation that is relevant and supportive of the outcomes. Combining content analysis with data analysis (Johnny Ibrahim; 2008)

## 3. Results and Discussion

### 3.1. Polygamy from Easy to Difficult

Polygamy is defined as a system of marriage that permits a person to have the wife or husband of more than one other person in the Big Indonesian Dictionary. Polygamy is also known as multi-spousal marriage. Despite the fact that polygyny is defined as a marital system that enables a man to have multiple women as his wives at the same time, the term is often used interchangeably. (Abu Ghuddah; 2004) Polygyny is the correct term for the situation in which a man has more than one wife, as detailed in the previous explanation provided by KBBI. Polygamy, on the other hand, is defined in this article as a marriage in which the husband has more than one wife at the same time. This is due to the fact that the term polygamy is more common in everyday language and is therefore more well known in the society.

There is a near universal agreement among scholars of fiqh that polygamy is permissible (kemumbuhan) for people who are able to behave justly and support for themselves financially, as long as they do so. Their discussion, in general, does not center on whether or not polygamy is morally acceptable, but rather centers on the number of wives that one man can legally marry at the same time. Zaki 'Ali al-Sayyid Abu Ghuddah in the book al-Zawaj wa al-Talaq wa al-Ta'addud Baina al-Adyan wa al-Qawanin wa Du'at al-Taharrur, emphasizes the permissibility of polygamy in Islam based on the Qur'an an, al-Sunnah and also the practice of Prophet Muhammad SAW and his companions. (Abu Ghuddah; 2004)

But in recent times, particularly around the beginning of the 20th century, the presence of polygamy has begun to be challenged and questioned, as well as the validity of the practice. After that time, several Muslim scholars began to view polygamy not as something that was permissible or even sunnah, but rather as an emergency escape that could be utilized by specific groups of individuals who genuinely matched the standards. Polygamy was viewed in this way because it was an option that could be used by those who actually met the requirements. There are also a few people that advocate for, contemplate, and suggest that polygamy ought to be banned or outlawed, or at the very least that it ought to be illegal lighairih. (Musda Mulia; 2004)

On the other hand, it is possible to assert that the predominant viewpoints of modern Muslim scholars and scholars prefer to consider the law of polygamy as a *rukshah*, which can only be pursued after adhering to stringent terms and restrictions, and not *mubah*, let alone *sunnah*. The legalization of stringent forms of polygamy in Muslim nations over the 20th and 21st centuries has contributed to the growth of this trend, which is becoming increasingly prevalent. (Islah Gusmian; 2007)

In a nutshell, the responses of academics to the question of polygamy throughout history and up until the present can be broken down into three primary camps:

1. The view that believes polygamy is something that is *sunnah*, or at least *mubah* without various and burdensome requirements. In general, classical and mediocre scholars as well as traditionalist-fundamentalist scholars adhere to this belief.
2. Views that understand polygamy as *rukshah* or emergency exit. This kind of understanding is widely adopted by contemporary interpretation scholars and moderate Muslim scholars. In Engineer Asghar Ali's understanding, the Qur'an was actually "reluctant" to accept the institution of polygamy, but because conditions at that time still desired it later, all that could be done was to limit it to four. (Khoiruddin Nasution; 2002)
3. The view that polygamy is prohibited or at least considered *illegal lighairihi*. In general, Muslim feminist groups and gender activists adhere to this position. ( Abdurrahman Muqith and Fadil; 2022)

### **3.2. Arrangement Polygamy in Indonesia**

In the past, men in Indonesia, as in other areas of the world, were likely expected to engage in polygamous relationships. This practice was also commonly accepted. Polygamy is accepted and common in practically all of the customary laws of Indonesia. This is especially true in higher social classes, such as among nobles, kings, religious leaders, traditional leaders, wealthy people, and so forth. This practice is not exclusive to a single faith in Indonesia; rather, it is practiced by a number of different religions across the country. Polygamy is something that may be found in society and is rather simple to do. (Hilman Hadikusuma; 2007)

In general, polygamy as it was practiced by society throughout that time had a variety of traits including the following:

1. It is quite easy to do, because men can use these 'rights' without being overshadowed by various difficult requirements.
2. Not involving the wife's consideration or approval for husbands who want to remarry.
3. There was no definite rule of law that could cover women's rights, because at that time, the law that applied to the Muslim population of Indonesia was traditional fiqh law, which was quite loose in matters of polygamy.
4. The court institution is not involved in rejecting or granting a wish to polygamy.
5. The justice required in traditional fiqh is understood unilaterally by men and is interpreted only as external justice.
6. The ease with which to practice polygamy also gains 'recognition' from society in general, who view this as something 'natural' for men, especially for those with high social status because of their wealth or position. ( Romaniyah , Inayah, and Sodik ; 2009)

To Put It Simply, the Laws Regarding Marriage, Number 1 1974 is a year that corresponds to the principle of monogamy, which states that a man or a woman can only have One

Husband or One Wife at any given time. However, in condition certain, there are loopholes that open the door to polygamy for men who meet the parameters necessary for polygamy. (Edi Darmawijaya; 2015)

Even though it is uncommon for people in Indonesia to create marriage agreements, let alone expressly organize polygamous weddings, it is possible for a wife to make a marriage agreement to not be married to the couple in order to lessen the likelihood that polygamy will occur. However, this option is not available to all wives. If there is a marriage agreement not to unite the wife and the husband breaks it, it can be used as a reason to cancel the marriage or used as a reason to sue the husband for divorce. If there is a marriage agreement not to unite the wife and the husband violates it, it can also be used as a reason to unite the wife. Article 51 of the KHI outlines this clause, as may be viewed here

#### Article 51 KHI

Violation of the marriage agreement gives the wife the right to request an annulment of the marriage or submit it as a reason for a divorce suit to the Religious Courts.

Another form of restriction in Indonesian law is that women who can be used as additional wives are limited to a maximum of four, not more than KHI.

#### Article 42 KHI

A man is prohibited from marrying a woman if the man has 4 (four) wives, all four of whom are still bound by marital ties or are still in the iddah of raj`i divorce or one of them is still bound by the marriage rope while the other is in the iddah period. divorce raj`i.

Apart from limiting the maximum number to 4, Article 55 KHI also requires husbands to treat their wives and children fairly. If this condition cannot be fulfilled, the husband is prohibited from having more than one wife.

#### Article 55 KHI

- (1) Having more than one wife at the same time, limited to four wives.
- (2) The main condition for having more than one wife is that the husband must be able to treat his wives and children fairly.
- (3) If the main conditions referred to in paragraph (2) cannot be fulfilled, the husband is prohibited from having another wife. (Reza Fitra Ardhian, Satrio Anugrah, and Setyawan Bima; 2015)

Then, through article 52 KHI, it opens the option for polygamous couples to make agreements regarding the place of residence, turn times, and household expenses. This agreement is expected to reduce the possibility of problems that will arise in the future, because after all polygamous marriages have the potential to arise problems, especially regarding 'divisions' that will not be experienced by monogamous couples.

Procedurally, a meaning husband \_ do polygamy or married more from a must submit application in a manner written accompanied the reasons like pourde in Articles 4 and 5 UUP No. 1/1974 jo . Article 41 PP No. 9 of 1975. The requirement for a court permit is also stipulated in KHI Article 56 KHI .

- (1) The husband who wants married more from one person must get permission from Religious Court.
- (2) Submission application the permit referred to in paragraph (1) is carried out according to the procedure as arranged in Chap VIII Rules Goverment No. 9 of 1975 .
- (3) The marriage is done with wife second , third or fourth without permission from Court Religion, no have strength law .

As for the application meant addressed to regional religious court place his stay with bring quote Marriage certificate and letters required permission . \_ On the side must submit permission polygamy as arranged in Article 40 PP No. 9 of 1975 , a husband wants \_ polygamy must fulfil a number condition like arranged Article 4 paragraph 2 UUP:

- a. Wife No can operate his obligations as wife .
- b. Wife get disability or \_ disease that is not can healed ;
- c. Wife No can give birth to descent . ( Marzuki ; tt )

Terms This called with condition alternative , meaning condition This No must fulfilled everything , however Enough if one \_ There is so considered Already fulfil terms . Different with provision Article 4 of this , then provision Article 5 below This characteristic cumulative , that is everything must exists and is fulfilled . (Fatimah Zuhrah ; 2017)

Furthermore in Article 5 UUP explained :

(1) For can submit application to court , as meant in Article 4 paragraph (1) of the law This must fulfilled conditions as following :

- a. There is agreement from wife / wives - wives ;
- b. There is certainty that husband capable ensure needs life wife - wife and children they ;
- c. There is guarantee that husband will apply fair to wife - wife and children them . ( Darmawijaya ; tt )

In chapter 5 verse 2 back emphasized :

The approval referred to in paragraph (1) letter a article This No needed for a husband if his wives \_ No Possible asked consent and no can become party in agreement , or if No There is news from wife his during at least 2 (two) years , or Because reasons other necessary \_ get evaluation from the trial judge . ( Zuhrah ; tt )

Regarding polygamy procedures, provisions regarding this matter can also be read in PP Number 9 of 1975 article 40 which states:

If a husband intends to have more than one wife, he must submit a written application to the court.

Furthermore, the court examines the application for a permit as stipulated in article 41 PP Number 9 of 1975 as follows:

- a. Whether or not there are reasons that allow a husband to remarry.
- b. Whether or not there is consent from the wife, both verbal and written consent, if the agreement is an oral agreement, the agreement must be said before a court hearing.
- c. Whether or not the husband has the ability to guarantee the necessities of life for his wife and children, by showing:
  - i. certificate regarding the husband's income signed by the treasurer of the place of work; or
  - ii. Income tax certificate; or
  - iii. Other certificates that can be accepted by the court.
- d. Whether or not there is a guarantee that husbands will treat their wives and children fairly with a statement or promise from the husband made in the form specified for that purpose. (Eko Wahyu Budiharjo; tt)

Examination must involve the wife which in outline is regulated as follows:

1. In carrying out examinations regarding matters in articles 40 and 41, the court must summon and hear the wife concerned.
2. The court examination for this is carried out by the judge no later than 30 (thirty days after receipt of the application letter and its attachments).

The granting of a permit is issued by a court which in the law confirms:

If the court is of the opinion that there is sufficient reason for the applicant to have more than one wife, the court will issue a decision in the form of permission to have more than one wife.

If in practice the wife does not want to give consent, article 59 KHI regulates as follows:

#### Article 59 KHI

In matter wife No Want to give approval and application permission For married more from one person based on sal a h one stated reasons \_ in article 55 paragraph (2) and 57, Court Religion can set about giving \_\_ permission after check and hear that wife concerned at trial Religious Courts , and against determination This wife or husband can appeal or \_ cassation .

There are certain prohibitions for registrar employees regulated in the law that, "Registrar employees are prohibited from recording the marriage of a person who will have more than one wife before obtaining court permission as referred to in article 43".

#### Unlicensed Polygamy Status

If there are polygamists without court permission, then there are two consequences, namely, the marriage has no legal force and can be annulled as stipulated in the Compilation of Islamic Law.

#### Article 56

(1) The husband who wants married more from one person must get permission from Religious Court .

(2) Submission application Permission referred to in paragraph (1) is carried out according to the procedure as arranged in Chapter VIII Regulation Government No. 9 of 1975.

(3) The marriage is done with wife second , third or fourth without permission from Court Religion, no have strength law .

#### Article 71 Compilation of Islamic Law

A marriage can be annulled if:

a. a husband who practices polygamy without permission from the Religious Court;

In Indonesia itself, unregistered marriages are quite widespread, one of which is donated by polygamists who do not comply with procedures by cutting the compass without going through a court permit so that their implementation is outside the supervision of VAT.

#### Civil servant polygamy

Especially for civil servants (PNS), polygamy is regulated in more detail and strictly in PP No. 10 of 1983.

Article 4 PP Number 10 of 1983 regulates:

- (1) A male Civil Servant who will have more than one wife must obtain prior permission from the Official.
- (2) Female civil servants are not permitted to become second/third/fourth wives of civil servants.

(3) Female Civil Servants who will become the second/third/fourth wife of non-Civil Servants, must first obtain permission from the Official.

(4) Requests for permits as referred to in paragraph (1) and paragraph (3) shall be submitted in writing.

(4) In the request for permission as referred to in paragraph (4), it must include complete reasons underlying the request for permission to have more than one wife or to become a second/third/fourth wife. (Hilman Hadikusuma, 2007)

Furthermore, in PP No. 45 of 1990 concerning Amendments to PP 10-1983 concerning Permits for Marriage and Divorce for Civil Servants, amended the provisions of Article 4 PP No. 10 of 1983, so that the provisions become:

(1) A male Civil Servant who intends to have more than one wife must first obtain permission from the Official.

(2) Female civil servants are not permitted to become second/third/fourth wives.

(3) The request for a permit as referred to in paragraph (1) shall be submitted in writing.

(4) In the request for permission as referred to in paragraph (3), it must include complete reasons underlying the request for permission to have more than one wife. (Moch Isnaeni; 2016)

Then in Article 5 PP No. 10 of 1983 explains:

(1) Requests for permits as referred to in Article 3 and Article 4 are submitted to the Official through written channels.

(2) Every superior who receives a request for permission from a Civil Servant in his environment, either to divorce or to have more than one wife, or to become a second/third/fourth wife, is obliged to give consideration and pass it on to the Official through hierarchical channels within a period of no later than 3 (three) months from the date he received the said permit request.

Government Regulation Number 45 of 1990 Amends the provisions of paragraph (2) of Article 5 so that it reads as follows: (Note that the sentence being a second/third/fourth wife is omitted)

(2) Every superior who receives a request for permission from a Civil Servant in his environment, whether to carry out a divorce and or to have more than one wife, is obliged to give consideration and forward it to the Official through hierarchical channels within a period of no later than three months from the date he accept the said permit request. (Mardani; 2016)

Permits will be given by officials if they meet the requirements as can be seen from the sound of Article 10 PP Number 10 of 1983:

(1) Permission to have more than one wife can only be granted by an official if he fulfills at least one of the alternative conditions and the three cumulative conditions referred to in paragraph (2) and paragraph (3) of this article.

(2) The alternative conditions as referred to in paragraph (1) are:

- a. The wife cannot carry out her obligations as a wife;
- b. The wife has a physical disability or an incurable disease; or
- c. The wife cannot bear children.

(3) The cumulative requirements as referred to in paragraph (1) are:

- a. there is written consent from the wife;

- b. The male Civil Servant concerned has sufficient income to support more than one wife and children as evidenced by an income tax certificate; And
- c. there is a written guarantee from the civil servant concerned that he will treat his wives and children fairly.

(4) Permission to have more than one wife is not given by the Official if:

- a. Contrary to religious teachings/regulations adhered to by the Civil Servant concerned;
- b. Does not meet the alternative requirements as referred to in paragraph (2) and the three cumulative requirements in paragraph (3);
- c. Contrary to the applicable laws and regulations;
- d. The reasons put forward are contrary to common sense; and/or
- e. There is a possibility of interfering with the implementation of official duties. (Mardani; 2016)

The sanctions that will be applied to civil servants who violate them are explained in article 15 of PP Number 45 of 1990 which reads:

Article 15 :

(1) Civil Servants who violate Article 4 paragraph (1) have more than 1 wife without permission, are subject to one of the severe disciplinary punishments based on Government Regulation Number 53 of 2010 concerning Disciplinary Regulations for Civil Servants;

(2) Female Civil Servants who violate the provisions of Article 4 paragraph (2) namely becoming second/third/fourth wife are subject to disciplinary punishment of dishonorable discharge as Civil Servants;

(3) Bosses who violate provision Article 5 paragraph (2), and officials who violate it provision Article 12, sentenced to one punishment discipline heavy based on Regulation Government Number 53 of 2010 concerning Regulation Discipline Civil Servants . " (Ahmad Rofiq ; 2016)

### ***3.3. Regulation of Polygamy in Morocco***

The Mudawwanah al-Usrah 2004, which is the main legislation of marriage in Morocco, is essentially a development and refinement of the Mudawwanah, which was issued in 1957-1958. The Mudawwanah was initially enacted in 1957-1958. King Muhammad VI initially presented the new young to the public in the year 2003. The next Mudawwanah will take office after they have received approval from parliament. This rule went into effect in February of 2004. According to King Muhammad VI, the new Mudawwanah is the incarnation of concepts that have been integrated into worldwide Islamic teachings and is led by linked modern understandings of proper basic man. Regarding the entire Moroccan resident population. The term "Mudawwanah" refers to just the body of legislation that is constructed with reference to religious teachings, particularly those of the Maliki school of thought. This kind of situation takes place in neighboring nations around Morocco as well, despite the fact that secularism serves as the foundation for the laws governing other fields, as is the case in many regions of Europe. (Muhammad asy-Shaf'i;l; 2009)

In addition, the new Mudawwanah, whose full name is Mudawwanah al-Ahwal ash-Shakhsiyah al-Jadidah fi al-Maghrib and which was ratified on February 3, 2004, includes provisions for the regulation of polygamy in Morocco. This document was ratified on February 3, 2004. This brand-new volume of Mudawwanah has a total of four hundred articles. If we look at Mudawwanah, which was compiled in 1957 and only has 300 articles,

we can see that there have been enough additions to make them important, which is 100 articles. (Muhammad asy-Shaf'i;l; 2009)

Articles 40 through 46 contain the rules and regulations regarding polygamy. In his work titled "al-Zawaj fi Mudawwanah al-Usrah," Muhammad asy-Syafi'i, a lecturer at the Faculty of Law of Marrakech, provides more explanations of each of these topics. While the official explanation from Mudawwanah al-Usrah was put out by the Ministry of Justice and given the title *Dalil 'Amali li Mudawwanah al-Usrah*, the Ministry of Justice. The pages 38-42 cover a discussion on the regulation of polygamy as well as an explanation of the problems associated with it. (Wuzarah Al- 'Adl ' ; 2004)

In Morocco, adding more wives than is permitted by Islamic law is considered a temporary offense because of article 39 paragraph 2 of the chapter on the prohibition of temporary marriages. Polygamy is permissible according to *Mudawwanah al-Usrah* up to the number of wives that are allowed by *syara'*, which is a maximum of four wives at the same time. However, the number four people is not brought up directly in the article at any point. (Muhammad asy-Syafi'i ; 2009)

The practice of polygamy is legal in Morocco, just like it is in Indonesia. Regulations against polygamy have been shown to reduce the number of people who engage in the practice, which is a considerable achievement. In Morocco, the number of polygamous weddings dropped by around 12.5% from 2005 to 2006, compared to the total number of marriages that took place during that time period. Polygamy has become increasingly uncommon in Morocco ever since the mudawanah was passed in 2004, yet it is a known fact that supervision in the rural areas is lacking, which is why some people continue to engage in the practice. (Dina Rosin, 2018).

In spite of this, there are still a significant number of people who want to get married more than once in Morocco, which means that the number of people applying for polygamy permits is relatively high. According to the official count, the number of people applying for polygamy licenses reached 559 thousand during the course of a period of ten years, from 2005 to 2016. About 19,000 of such applications were accepted, while the remaining ones were rejected because they did not meet the criteria established by the state.

In addition, the control of polygamy is discernible from the tone of the articles in the *Mudawwanah al-Usrah* as well as the explanation that is presented in the following paragraphs.

The first sentence of Article 40 *Mudawwanah* is written in a way that creates the impression of 'scaring' with the language that it uses. It is illegal to practice polygamy if it is believed that the husband will not be able to act fairly, and it is also illegal to practice polygamy if the wife insists that she does not want to have any other romantic relationships.

#### Article 40

Polygamy was banned when it was feared it would create injustice between the wives. Polygamy is also prohibited when the wife determines the conditions in the marriage that her husband will not marry another woman to be his wife. (wuzarah al adl; tt)

The editor chosen by lawmakers in Morocco used the opening words, "polygamy is prohibited" if it is felt that it will cause injustice among the wives. This language is more suggestive of a prohibition than the editorial that a husband who wants polygamy is obliged to act fairly. Given that, factually, it is almost certain that a polygamous marriage will cause injustice, at least that is what most wives feel and experience when a husband decides to do polygamy. The requirement not to cause injustice to the wife is almost difficult to fulfill so the chances of being granted are very small. Judgments are judged to

be fair or not and the dangers that may arise for the former wife are determined by the panel of judges handling this case.

In addition, law in Morocco also allows the wife to make conditions when getting married that the husband may not remarry, if this condition is agreed upon by the husband and wife, then the husband will not be allowed to practice polygamy, if the husband is desperate to do polygamy, then the wife has the right to file for divorce in court. . (Muhammad asy-Syafi'i, 2005)

Furthermore, in article 41, it is even more stringent that a polygamy application will not be granted by the court if there is no justifiable reason for polygamy and the husband is deemed not to have an income capable of supporting two families. Article 41 reads in full as follows:

Court No will allow polygamy :

- If objective and extraordinary justifying reasons are not proven .
- If the husband does not have sufficient income to support two families and bears all obligations in the form of maintenance, housing and equating treat in all aspects of life . (wuzarah al adl; tt)

If the two articles are concluded, then the court in Morocco will not grant the polygamy permit proposed by the husband if:

1. The wife makes conditions when the marriage contract takes place or the agreement that follows later that she does not want to be married to her husband.
2. If in the view of the majlis of judges it is feared that the husband will not be able to act fairly between his wives and children.
3. If objective reasons justifying polygamy put forward by the husband are not proven.
4. If the husband fails to prove that he has the material ability to support two families and is able to treat the same in all aspects of life. (wuzarah al adl; tt) These conditions are actually not something that is really new. These conditions basically only describe in more detail and concretely the demands of the verses of the Koran that husbands must act fairly. Also the recommendation of the Koran to have one wife so as not to abandon the family because of the heavy burden of taking care of two or more families. Interestingly, the opening of the article uses the editorial "the court will not grant permission for polygamy" which gives the impression of being frightening and difficult, and in reality it is indeed difficult to fulfill.

Furthermore, article 42 regulates as follows:

With No exists conditions by the wife in obstructing marriage contract polygamy , husband who wants polygamy must submit permission to court . The application for a permit must contain extraordinary motives which serve as justification, accompanied by a statement of the applicant's financial condition. ( wuzarah al adl ; tt )

The next process the court will summon the parties to appear in court as stipulated in article 43.

### Article 43

Court will call wife whose husband want to remarried to appear in court . If she has personally received the summons and does not appear in court, or refuses to accept the summons, the court will send her a formal invitation using a process server reminding her that if she does not appear at the hearing scheduled in the notification, the husband's application will be decided in her absence.

Judgments may also be rendered in absentia wife when impossible for bailiff to ensure address anyway or place where does he live ? calling can be delivered . When the wife does not receive a summons because of the husband's malicious intent by giving a fake address or falsifying the wife's name, the husband is subject to, at the request of the injured wife, the punishment regulated in Article 361 of the Criminal Code. (Muhammad asy-Syafi'i, 2005)

Furthermore, the provisions of article 44 regulate as follows:

The trial took place in the consultation room in the presence of both parties, and the two were heard to reach an agreement and reconcile the two after checking the facts and submitting the required justification reasons.

Courts can allow polygamy in reasoned judgments, and these judgments are not open to appeal as such establish the existence of objective and extraordinary justification reasons and apply them favorable conditions for his first wife and children. (Muhammad asy-Syafi'i, 2005)

Article 45 regulates the following matters:

When the court ensures in the deliberation that the continuation of the husband and wife relationship is no longer possible to maintain, where the wife whose husband wants to take another wife still insists on demanding a divorce, the court determines the amount of money that must be borne by the husband in accordance with the full rights of the first wife and her children who become responsibility.

Husband must pay fixed amount of money within time limit maximum seven day . After handing over the amount of money requested , the court emit decision divorce . this decision No open to appeal because concerns dissolution connection marriage . (Muhammad asy-Syafi'i, 2005)

Failure to submit the requested amount of money within the set deadline is considered a withdrawal of the application for a polygamy license. If husband still in application permission polygamy , and wife reject For agree and no request divorce court \_ in a manner automatic apply procedure syiqaq in Articles 94 and 97 thereafter .

The final provisions regarding polygamy are regulated in article 46 which reads:

#### Article 46

If the application for polygamy is granted, the marriage to the prospective wife is not considered consummated until the judge has informed him that the applicant's husband is married and his wife has agreed to this. Notice and approval This noted in report official .

This is the regulation of polygamy in Morocco, which clearly shows the nuances of difficulty and tightening so that polygamy becomes difficult to practice in Morocco. This rule will make many husbands reconsider if they have the desire to add a second wife and so on up to four. (Muhammad asy-Syafi'i, 2005)

#### **3.4. Similarities and differences**

Both the legislation in Indonesia and Morocco have the same goal, which is to restrict polygamy and make it more difficult for people to practice. Despite the fact that it is unavoidable to acknowledge the fact, the complexities of the situation in Morocco are far more pronounced than the requirements in Indonesia.

Following that, the conditions that must be met in order for a person to be granted permission to practice polygamy are likewise quite comparable to one another and remain mostly unchanged. It's just that under Moroccan law, a wife has the explicit right to impose

conditions or come to an agreement with her husband that they will not be married or that she does not want to be married to him. Even if this regulation does not appear directly in Indonesian law, it is nevertheless possible for a husband and wife to agree to not be married to each other during the wedding. This is just one of the conditions that must be met for this to take place. The law in Morocco is not as explicit as the law in Indonesia, which is another distinction between the two countries' legal systems. Indonesian law governs the grounds why a husband may apply for polygamy more clearly than Moroccan law does.

Both Indonesian and Moroccan law allow the right of the wife to petition for the fasakh (annulment) of the marriage if the husband remarries another woman under certain circumstances. These circumstances include the wife submitting conditions or making an agreement not to have another partner. On the other hand, criminal penalties await husbands in both Indonesian and Moroccan law who fabricate information, information, or identities that are harmful to their wives or girlfriends. This is the other side of the coin.

In terms of the language that is used in each law, the language that is used in the Mudawwanah appears to be more "ferocious" toward polygamy. This is due to the fact that the Mudawwanah uses the phrase "polygamy is prohibited" as the introduction of an article, and also because polygamy will not be authorized if... and so on. In the meantime, the language that is utilized in the Marriage Law is more gentle; it makes use of flat phrases and positive terminology.

An additional distinction is that the legislation of Indonesia explicitly states that polygamous weddings that take place without the consent of the court have no legal effect, and that interested parties have the right to petition the court for their annulment. Despite the fact that such rules are not found in the Moroccan legislation.

#### **4. Conclusion**

The practice of polygamy, which has been there for a long time with all of the authority and arbitrariness exerted by men, began to be contested and questioned at the beginning of the 20th century by a group of intellectuals and gender activists. These individuals believed that the practice was unequally distributed among the sexes and violated women's rights. This lawsuit was successfully reacted to by having it accommodated in legislation that restricts and complicates male polygamy. These restrictions and complications are the result of the establishment of a variety of measures that can put the brakes on and limit the pace of polygamy.

Indonesia and Morocco, both of which are largely Muslim countries, have the same viewpoint, which is that polygamy cannot be practiced without restrictions; hence, the legal frameworks of both nations have been constructed to make polygamy impossible to practice. The other significant distinction is that Moroccan law places more stringent restrictions on polygamy than other laws do. For example, a wife has the right to impose conditions on her husband before the two agreements can be joined. The court has decided to deny the husband his right to practice polygamy as a result of this arrangement. In the meanwhile, in Indonesia, it is conceivable to create such an agreement, but in practice it is done very seldom, and even if it is, it is not expressly stated as an impediment to proposing polygamy. Even if it is done, however, it is not explicitly declared as an obstacle to proposing polygamy. It is possible to assert that the Moroccan law regarding polygamy is more rigorous and harder to pass than the law regarding polygamy in Indonesia.

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